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IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH FIDLER

v.

PA. DEPT. of CORRECTIONS, ETAL

civil action

NO. 1:CV-01-0955

(JUDGE KANE)

(MAGISTRATE JUDGE SMYGER)

PLAINTIFF'S BRIEF IN RESPONSE TO  
DEFENDANT'S MOTION TO DISMISS

FOR SAKE OF CLARITY PLAINTIFF WILL ADDRESS DEFENDANT'S  
STATEMENT OF ISSUES IN SAME ORDER.

FILED  
HARRISBURG  
JUN 14 2001  
MARY E. D'ANDREA, CLERK  
Per [Signature]  
DEPUTY CLERK

STATEMENT OF ISSUE

1. SHOULD PLAINTIFF'S COMPLAINT BE DISMISSED, SINCE THE  
THE AMENDMENT TO DOC POLICY DC-ADM 816-5 IS  
UNCONSTITUTIONAL?

SUGGESTED ANSWER: NO.

ARGUMENT

IF A PLAINTIFF'S COMPLAINT DOES SPECIFICALLY STATE A  
CONSTITUTIONAL VIOLATION, THE COURT MUST THEN CONSIDER  
WHETHER THE RIGHT WHICH THE DEFENDANTS ALLEGEDLY  
VIOLATED WAS "CLEARLY ESTABLISHED." ANDERSON VS. CREIGHTON  
483 U.S. 635, 640, 107 S. CT. 3034, 3039, 97 L. ED. 2D 523 (1987)  
PLAINTIFF CLAIM THAT HE WAS DEPRIVED OF HIS LEGITIMATE  
EXPECTANCY OF IDLE ALLOWANCE WITHOUT NOTICE OR PREDPRIVATION  
HEARING. PLAINTIFF ALSO ALLEGES THAT HE WAS DEPRIVED OF HIS  
PERSONAL LIBERTY TO CHOOSE WHAT ACTIVITIES TO ENGAGE IN  
WHEN HE WAS FORCED TO PARTICIPATE IN SCHOOL PROGRAMS  
THE PREDICATE FOR REQUIRING THE DEFENDANTS TO COMPLY WITH  
THE RUDIMENTS OF PROCEDURAL DUE PROCESS IS A DETERMINATION  
THAT SOME CONSTITUTIONAL INTEREST IS AT STAKE. STANIA VS. SCHOOL  
DIST. of [illegible]

HERE PLAINTIFF CLAIMS A LIBERTY INTEREST IN HIS ALLOWANCE AUTHORIZED BY POLICY DC-ADM 816-5 \_\_\_\_\_

"INMATES WHO ARE UNASSIGNED THOUGH NO FAULT OF THEIR OWN SHALL BE GIVEN AN ALLOWANCE IN ACCORDANCE TO THIS POLICY" TO HAVE A CONSTITUTIONALLY PROTECTED LIBERTY RIGHT, THERE MUST BE A LEGITIMATE CLAIM OF ENTITLEMENT. STANA, 775 F.2d AT 126. WHILE A CLEARLY IMPLIED PROMISE CAN GIVE RISE TO A CONSTITUTIONALLY PROTECTED RIGHT, CORNWELL V. HIGGINBOTHAM, 403 U.S. 207, 91 S. CT. 1772 29 L. Ed 2d 418 (1971), A PERSON MUST HAVE MORE THAN A UNILATERAL EXPECTATION THAT SUCH AN ENTITLEMENT EXISTS. BOARD OF REGENTS V. ROTH, 408 U.S. 564, 577 92 S. CT. 2701, 2709, 33 L. Ed. 2d 548 (1972). THE PRESENT RECORD DOES ESTABLISH A CLEAR PROMISE RATHER, THERE EXISTS AN UNAMBIGUOUS POLICY GRANTING PLAINTIFF ENTITLEMENT TO AN ALLOWANCE IN ACCORDANCE TO POLICY DC-ADM 816-5. THE AMENDMENT TO DC-ADM 816-5 IS UNCONSTITUTIONAL, BECAUSE IT IS PUNITIVE IN NATURE, DESIGNED TO PUNISH PLAINTIFF FOR ASSERTING HIS CONSTITUTIONAL RIGHTS TO CHOOSE WHAT ACTIVITIES TO ENGAGE IN.

"THE DUE PROCESS CLAUSE PROTECTS FROM ARBITRARY GOVERNMENTAL ACTION." YOUNGBERG V. ROMEO, 457 U.S. 307, 316, 102 S. CT. 2109, 2100, 60 L. Ed. 2d 668 (1979). THIS SUBSTANTIVE LIBERTY RIGHT CAN ONLY BE INFRINGED BY RESTRICTIONS THAT ARE REASONABLY RELATED TO LEGITIMATE GOVERNMENT OBJECTIVE BUT NOT TANTAMOUNT TO PUNISHMENT. YOUNGBERG, 457 U.S. AT 320 102 S. CT. AT 2460. THESE PRINCIPLES ARE CLEARLY ESTABLISHED LAW AND THE DEFENDANTS ACTIONS ARE NOT REASONABLY OBJECTIVE IN LIGHT OF THIS LAW. SINCE THE DUE PROCESS CLAUSE PROTECTS LIBERTY OR PROPERTY INTEREST ONLY IF THE "CONDITIONS OR DEGREE OF CONFINEMENT" ARE NOT A PART OF THE SENTENCE IMPOSED. KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON 490 U.S. AT 460-61 (1989).

DC-ADM 816-5 AS AMENDED DEPRIVES PLAINTIFF OF HIS  
DUE PROCESS LIBERTY PROTECTED RIGHT—THE RIGHT TO RELY ON  
THE LEGALLY IMPOSED SENTENCE—THE ENHANCEMENT OF  
A SENTENCE THAT DOES NOT RECOMMEND OR STIMULATE  
PARTICIPATION IN SCHOOL PROGRAMS.

FOR ALL OF THE ABOVE REASONS IT IS REQUESTED  
THAT THE COURT REJECT DEFENDANT'S MOTION TO  
DISMISS AND ORDER THE DEFENDANT TO FILE AN  
ANSWER TO PLAINTIFF'S COMPLAINT.

DATE: 6/11/2001

RESPECTFULLY SUBMITTED  
Joseph Fitter

\_\_\_\_ CERTIFICATE OF SERVICE \_\_\_\_

I HEREBY CERTIFY THAT I AM THIS DAY DEPOSITING IN  
THE U.S. MAIL A TRUE AND CORRECT COPY OF THE FOREGOING  
PLAINTIFF'S BRIEF UPON THE PERSON AND IN THE MANNER  
INDICATED.

Joseph Fitter